HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application 977 of 2006

1. Gurnok Singh s/o Surata Singh
2. Lal Singh s/o Surata Singh
3. Goldy s/o Harjeet Singh
4. Raja s/o Harjeet Singh, All resident of village Bhesaha Farm P.S. Khatima, District Udham Singh Nagar ..... Petitioners

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Khatima
3. Akhitiyar Singh s/o Gurnam Singh R/o village Bhakachuri, P.S. Khatima, District Udham Singh Nagar ..... Respondents

Dated: 2.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Tumul Nailwal counsel for the petitioners and A.G.A. on behalf of the respondents.

By the present application under section 482 Cr. P.C. the petitioners have prayed for quashing of the entire proceedings of criminal case no. 348 of 2006, Akhtiyar Singh Vs. Gurnok Singh & others, under sections 147, 148, 323, 324, 395, 504, 506 and 354 I.P.C.

According to the petitioners there is a dispute between the petitioners and the respondents regarding some land which ultimately resulted into the alleged complaint preferred by the complainant respondent no. 3. The Chief Judicial Magistrate, Khatima after recording the statement of the complainant under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C. found sufficient evidence on record to take cognizance

in the case and accordingly issued summons to the petitioners vide order dated 20.3.2006.

Being aggrieved by the summoning order dated 20.3.2006, the applicants have preferred a Criminal Misc. Application No. 409 of 2006 under section 482 Cr.P.C. before this Court, which is still pending before this Court.

According to the petitioners a compromise between the parties has taken place on 27.6.2006 out side the Court and they moved an application to the Judicial Magistrate, Khatima for withdrawal of the criminal case in the light of the compromise but the learned Magistrate has dismissed the application vide order dated 27.9.2006, against which the present application under section 482 Cr.P.C. has been preferred.

Counsel for the petitioners have submitted that the present case comes within the ambit of Section 265-B Cr.P.C. which relates to the plea of bargaining and therefore, permission be granted to the accused in this regard.

I have perused the record and have gone through Section 265-A and 265-B CrP.C.

Section 265-A (b) relates to the applicability of this Chapter in respect of the accused, which reads as under:

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under

section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

In the present case, the offence in which the Magistrate has taken cognizance under section 204 CrP.C. includes the offence under section 395 I.P.C. which is exclusively triable by the court of Sessions and in which imprisonment for more than seven years has been provided. Further there is an offence punishable under section 354 I.P.C. which has been committed against the woman.

In this case the Magistrate has taken cognizance under section 204 Cr.P.C. and as the offence under section 395 I.P.C. is exclusively triable by the Court of Sessions, now the Magistrate has no other remedy except to commit the case to the Sessions Court under section 209 Cr.P.C. after complying the provisions of Sections 207/208 Cr.P.C.

So far as the question with regard to plea of bargaining as contained under section 265-B, is concerned, this section reads as under:

265-B. Application for plea bargaining *– (1) A person accused for an offence may file application for plea bargaining in the Court in which such offence is pending for trial.*

Thus for the purpose of present case the Court of Judicial Magistrate, Khatima is only a committal court and the trial Court is the Court of Sessions and even it the aforesaid plea of bargaining is applicable in the case of the petitioners, the plea of bargaining can only be taken before the trial Court i.e. Court of Sessions.

In view of above, no direction can be given under section 482 Cr. P.C. However, liberty is given to the petitioners to apply for

compromise or bargaining under section 265-B Cr.P.C. before the trial Court i.e. Sessions Court, who shall consider the plea of the petitioners before proceeding with the case.

Accordingly, application under section 482 Cr.P.C. is disposed of.

Dated: 2.12.2006 **Rajesh Tandon, J.**

*Dhyani